O. Rly/52

1952.

File No. P2E

Legal Deptt

A **BRANCH**

Subject:— Opinions under the Indian Railways Act, 1890.

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Office of the R.L.A.

The draft letter at page 15 ante proposed to be issued to the Ministry of Railways appears to be based on R.L.A.'s opinion No. 9174,dated the 13th September 1947 which in its turn relised upon the decision of the Madras High Court in Governor-General -in-council vs. The Municipal Council, Madura(1945,Madras Law Journal Vol.IIP.155). That decision of the Madras High Court has, however, on the point of interpretation of section 11(3)(b) of the Indian Railways Act been over-ruled by the Privy Council(1948 Madras Law Journal Vol.II 546) where it was held"that the obligation imposed upon the Railway Company by section 11(1) of the Railways Act, 1890, is to be measured by the conditions existing at the time of the making of the accommodation work. For the "further or additional accommodation works" mentioned in the sub-section may be required not because those originally constructed have become insufficient owing to a change of conditions, but becuase the adjoining landowner has mis-calculated what the conditions originally existing would demand for the commodious use of his land, and is given an opportunity within a limited time of making afresh demand. Nor would it be unreasonable in the circumstances which prefail in large parts of India that an unlimited time should be given to the Government to require that the same standard should be established and maintained. Therefore, as it appears to their Lordships section 11(3) (b) ought not, even if it stood alone, be given the wide meaning ascribed to it by the High Court. It is difficult to see what scope section 12 can have if under 11(3) (b) the Government can for all the time requisition such further or additional accommodation works as the commodious use adjoining land may from time to time with altering conditions require. There is, however, a clear reconciliation between the sections if the former relates only to such works as the physical conditions and use of the land at the time of construction of the railway required." In view of the decision of the Privy Council it appears that the draft letter at page 15 ante would not be in order and the proposal to address the letter for the purpose should be dropped.

Sd/-
28-2

Remembrancer of Legal Affairs.

U.R. to P.W.D..No.3261,dated the 28th February 1952.

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